

Date: March 8, 1995

BQC-95-008

To: Hospitals

HOSP 4

From: Judy Fryback, Director
Bureau of Quality Compliance

Subject: Questions and Answers on the Application of Anti-Dumping Requirements.

Attached is the Health Care Financing Administration (HCFA), Region V, Division of Health Standards and Quality Regional Program Letter No. 95-08. This letter deals with two questions that have been received by HCFA on anti-dumping requirements apply when a patient is transferred prior to medical stabilization and at the request of the patient's family. The second question asks whether a hospital can refuse to accept an appropriate transfer because its on-call physician refuses to come for the patient who is not on the receiving hospital's premises.

Please share this information with your appropriate staff and direct any questions that you may have to Hospital and Health Services Section Chief, Stephen D. Schlough, P.E., at (608) 266-3878.

JF/SDS/jh

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Attachment

cc: -BQC Staff
-Office of Legal Counsel
-Ann Haney, DOH Admin.
-Kevin Piper, BHCF Dir.
-HCFA, Region V, M. Dykstra
-Illinois State Agency
-Ohio State Agency
-Michigan State Agency
-Indiana State Agency
-Minnesota State Agency
-WI Coalition for Advocacy
-Serv. Employees Inter. Union
-WI Counties Assn.
-WI Health Info. Mgmt. Assn.
-WI Assn. of Medical Directors
-Admin., Division of Care and Treatment Facilities
-WI Assn. of Hospital SW and Discharge Planners
-WI Hospital Assn.
-Non-LTC BQC Memo Subscribers
-Mark Bunge, BPH
-DD Board

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Health Care Financing Administration
Region V
105 West Adams Street
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Refer to: CO5

February 1995

Division of Health Standards & Quality Regional Program Letter No. 95-08

Subject: Application of Anti-dumping Requirements

We have received the following guidance on two issues concerning the enforcement of the anti-dumping requirements of 42 CFR 489.24 and the related requirements of 42 CFR 489.20.

Question: If a patient with an emergency medical condition is admitted to a hospital through the emergency department and stabilizing treatment is given over a number of weeks but the patient is transferred at the family's request prior to full medical stabilization, do the anti-dumping requirements apply to the transfer.

Response: Yes. The protected transfer requirements of the law must be followed because the patient's emergency medical condition was never stabilized as defined by the law and regulation.

Question: Referring to the anti-dumping statute, can a hospital refuse to accept an appropriate transfer because its on call physician refuses to come for the patient who is not on the receiving hospital's premises? We acknowledge that the regulatory provision at 42 CFR 489.20(r)(2) is not yet in effect.

Response: A hospital with specialized capabilities or facilities must accept an appropriate transfer of an individual with an emergency medical condition if the individual requires those specialized capabilities or facilities and the transferring hospital cannot provide the necessary stabilizing treatment. The capability of a hospital's emergency department includes the services of its on call physicians. If a staff physician is on call to provide emergency services or to consult with an emergency room physician, then that physician would be considered to be available at the hospital. However, if the on call physician responds because of a legitimate reason (i.e., the physician is caring for another hospital and no one else is on call), the hospital would not be considered to have that particular specialty or capability to treat at that particular point in time.

If you have questions on the anti-dumping regulations, contact your program representative.

/s/ Robert E. Spain
Acting Branch Chief
Survey & Certification Operations Branch
Division of Health Standards & Quality